On or about the 7th April debentures to secure the sum of $70,000 were issued — $55,000 in favour of Mr. Wong Loh Hun and $15,000 in favour of two other persons. The debentures, as I have already said, were to be effective by way of a floating charge on the assets of the company. It was frankly admitted by Mr. Chew Chye Leng in cross-examination that the object in creating these debentures was to raise the money to enable the shareholders, including Madam Chan Fook Yuet and himself, to withdraw moneys they had invested in the company. Mr. Wong Loh Hun said in evidence that he lent the money in respect of which the debentures were created because he was informed by Mr. Chew Chye Leng that the money was required for trading purposes. He further said that at the time he lent this money he had no idea that his sister-in-law, Madam Chan Fook Yuet was, in fact, withdrawing $69,000 odd from the funds of the company; nor did Mr. Chew Chye Leng inform him that he, Mr. Chew Chye Leng, was withdrawing $22,000 odd. I did not for a moment believe this evidence. Mr. Wong Loh Hun was the Secretary of the company and closely associated with both Madam Chan Fook Yuet and Mr. Chew Chye Leng. The debentures were to be valid with effect from and including the 11th April, 1958. The 11th April was, in fact, the day before the loss of the rubber was discovered and, of course, not very long after Mr. Forrester had pointed out the remarkable difference — according to the company's own Daily Stock Statements — as to the quantity of unprocessed rubber still on the company's premises and the processed rubber delivered to the petitioners' godown. I had no doubt whatsoever that at the time of all these transactions the responsible Directors and the Secretary of the company must have known perfectly well that it was not in a position to meet its liabilities.

One last matter for comment. Ninety tons of rubber was admittedly found to be missing from the company's premises on the 12th April. The company had obtained advances totalling over $100,000 from the petitioners on the strength of 90 tons of unprocessed rubber allegedly delivered on to the company's premises for processing and final delivery to the petitioners. Either these 90 tons of rubber were not delivered on to the company's premises and the petitioners were induced by way of false pretences to make these advances, or they were delivered and advances obtained thereon but subsequently the rubber, whether before or after process, was delivered to a destination other than the petitioners. Under the Rubber Supervision Enactment licensed rubber dealers are obliged to record full particulars of all transactions relating to the purchase, sale or consignment of rubber. Throughout these proceedings — and, indeed, throughout the investigations conducted by Mr. Sykes, Chartered Accountant, into the company's affairs at the instance of the petitioners, — the company has steadfastly refused to produce or disclose any of its stock records which were kept — or which should have been kept — by it of transactions under the Rubber Supervision Enactment. Mr. C. O. Lim has urged with truth that this is not a common law action and the petitioners are not entitled to disclosure or discovery of the company's books or documents. This is undoubtedly true. But when the final issue comes before me as to whether, in all the circumstances of the case, it is just and equitable for the Court to order the winding-up of this company, the conduct of the company in relation to the management of its affairs in accordance with the law appears to me to be clearly a matter for comment and consideration. On the facts of this case I hope and trust that those responsible for the enforcement of the Rubber Supervision Enactment will not let the affairs of this company pass without careful consideration and scrutiny of its conduct.

It was for these reasons that I made an Order under section 166 of the Companies Ordinance for the compulsory winding-up of this company.

Order accordingly.

Solicitors: *Presgrave & Matthews; Lim, Lim & Oon.*

PRACTICE NOTE — PRIVY COUNCIL — CRIMINAL APPEAL

In Re MUHAMMAD NAWAZ & ORS., PETITIONERS

[J.C. (Viscount Simon L.C., Lords Atkin, Thankerton and Russell of Kilowen, and Sir George Rankin) July 16, 1941]

Privy Council — Criminal appeals — Petitions for special leave to appeal in forma pauperis — Certification — "Reasonable ground" — Review of criminal proceedings — Principles applicable — Judicial Committee Rules, 1925, r. 8. *

The Judicial Committee is not a revising Court of criminal appeal: that is to say, it is not prepared or

* See now r. 8 of the Judicial Committee Rules, 1957.

required to re-try a criminal case, and does not concern itself with the weight of evidence, or the conflict of evidence or with questions as to corroboration or contradiction of testimony, or as to whether there was sufficient evidence to satisfy the burden of proof. Neither is it concerned to review the exercise by the previous tribunal of its discretion as to permitting cross-examination as a hostile witness or in awarding particular punishments. The Judicial Committee cannot be asked to review the facts of a criminal case, or set aside conclusions of fact at which the tribunal has arrived. In all such cases an appeal on such grounds is useless, and is indeed an abuse of the process of the Court. Broadly speaking, the Judicial Committee will only interfere where there has been an infringement of the essential principles of justice, or so "outrageous, as to shake the very basis of justice." An obvious example would be a conviction following a trial, where it could be seriously contended that there was a refusal to hear the case of the accused, or where the trial took place in his absence, or where he was not allowed to call relevant witnesses. Similarly, of course, if the tribunal was shown to have been corrupt, or not properly constituted, or incapable of understanding the proceedings because of the language in which the proceedings were conducted. Another and obvious example would arise if the Court had no jurisdiction either to try the crime, or to pass the sentence. And counsel who certify that a petition of appeal might be reasonably presented will be justified in doing so only on one of the grounds abovementioned or other equally important ground.

Cases referred to:—

(1) *In re Dillet* (1887), 12 App. Cas. 459; 56 L.T. 615; 16 Cox C.C. 241.

(2) *Mohindar Singh v. Emperor*, A.I.R. 1932 P.C. 234; 59 I.A. 233; 140 I.C. 290; 34 Cr.L.J. 18; I.L.R. 13 Lah. 479.

PRIVY COUNCIL APPEAL.

Viscount Simon L.C.: The Judicial Committee has before it this morning 13 petitions for special leave to appeal in criminal cases in *forma pauperis*. All the proposed appeals are from the High Court of Judicature at Lahore, which in each instance has confirmed the decision of a Sessions Judge sentencing the petitioner to death for murder. In each of these thirteen cases the papers before their Lordships include (as r.8 of the Judicial Committee Rules requires) a certificate signed by counsel in India that the petitioner has reasonable grounds of appeal to this Board.

Their Lordships regret to find that, with the possible exception of one of the petitions, there is no basis whatever on which a certificate could, or should have been given expressing the opinion that there were grounds on which the petition could properly be presented. This is a very serious matter, not only because those who so certify are misusing their professional position, but because the due course of criminal justice is interfered with if the delay of application to the Board is interposed without any valid reason between the judgment of the Court in India and the due execution of the sentence which that Court thinks it right to pronounce.

Their Lordships' attention is called to the fact that this is not the first time that a batch of petitions has been brought before the Board praying, on wholly inadequate grounds, that appeals may be brought against death sentences for murder which have been duly confirmed by the High Court of Lahore. This has happened several times, e.g., in May last nine such petitions came before the Board from Lahore, together with one from Oudh, one from the North-West Frontier Province, and one from Sind. In these cases also the certificates as to reasonable cause of appeal, without which no application was possible, were equally unwarranted.

It is evident that there exists in parts of India, and especially in the Punjab, a serious error as to the strict and definite limits within which the Judicial Committee entertains appeals from a criminal sentence. Their Lordships must assume that these certificates are given under a misunderstanding of the true position, as otherwise some of them could only be explained as proceeding from an utter disregard of the solemn and serious responsibilities of the counsel who certify. Their Lordships therefore desire to restate, in unmistakable terms, the limits of the jurisdiction exercised in criminal appeals by the Judicial Committee, and trust that this explanation will be carefully noted in the quarters where it seems to be needed, and that the practice of which their Lordships have to complain will cease.

The Judicial Committee is not a revising court of criminal appeal: that is to say, it is not prepared or required to re-try a criminal case, and does not concern itself with the weight of evidence, or the conflict of evidence or with inferences drawn from evidence, or with questions as to corroboration or contradiction of testimony, or whether there was sufficient evidence to satisfy the burden of proof. Neither is it concerned to review the exercise by the previous tribunal of its direction as to permitting cross-examination as a hostile witness or in awarding particular punishments. In some of the certificates of counsel which are before the Board in connection with the present set of

petitions the certificate sets out particular reasons why it is considered that there is a reasonable ground for appeal, and these reasons disclose that the certifying counsel has not appreciated, or allowed for, the fact that the Judicial Committee cannot be asked to review the facts of a criminal case, or set aside conclusions of fact at which the tribunal has arrived. In all such cases an appeal on such grounds is useless, and is, indeed, an abuse of the process of the Court.

It may be of assistance to counsel who are considering whether they are justified in certifying that a petition of appeal in a criminal case might reasonably be presented, to give illustrations by way of contrast, of what are the limited but very important grounds on which a petition in a criminal case may properly be presented. Broadly speaking, the Judicial Committee will only interfere where there has been an infringement of the essential principles of justice. An obvious example would be a conviction following a trial where it could be seriously contended that there was a refusal to hear the case of the accused, or where the trial took place in his absence, or where he was not allowed to call relevant witnesses. Similarly, of course, if the tribunal was shown to have been corrupt, or not properly constituted, or incapable of understanding the proceedings because of the language in which the proceedings were conducted. Another and obvious example would arise if the Court had no jurisdiction either to try the crime, or to pass the sentence. These limitations upon the interference of the Judicial Committee with convictions arrived at by tribunals charged with criminal jurisdiction beyond the seas have been again and again laid down in the clearest terms at this Board. It is sufficient to quote Lord Watson's words, in *In re Dillet*, (1) that "the rule has been repeatedly laid down, has been invariably followed, that Her Majesty will not review or interfere with the course of criminal proceedings, unless it is shown that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been down"; or, as Lord Dunedin said, (2) "There must be something so irregular, or so outrageous, as to shake the very basis of justice."

Their Lordships have thought it right on this occasion to re-state these principles at some length in the hope that it will assist practitioners, who are asked to certify in support of a proposed petition, in determining whether it is in accordance with their professional duty to do so. They trust that these observations will have a beneficent effect. If, indeed, after this explanation and warning petitions continue to reach the Board which never should have been certified, it will be necessary to call the attention of the suitable authorities in the area from which such petitions come to the continued disregard of the rule by the certifying counsel concerned. Their Lordships must make it plain that no reflection is involved upon the conduct of counsel or solicitors representing these petitioners before the Board today: they cannot properly be held responsible for improper certificates signed by other counsel in India.

NARAYANI AMMA (f) v. MOHAMED DIN

[O.C.J. (Smith J.) September 6, 1957]

[K.L. — Civil Suit No. 124 of 1956]

Workmen's Compensation — Alternative remedies — Recovery of compensation — Conditional acceptance — Right of action against 3rd party not to be prejudiced — Workmen's Compensation Ordinance, 1952, s.20(a) — Quantum of damages.

The question at issue in this case was whether acceptance of compensation under the Ordinance precluded the plaintiff from recovering damages in an action against the third party. The plaintiff before accepting payment from her deceased husband's employer executed and delivered a document in the following terms: "I wish to claim for compensation under the Workmen's Compensation Ordinance. In the event, I or on my behalf the employer takes civil action against the owner of the vehicle for damages, I undertake to indemnify the employer, i.e. I agree to refund the amount paid to me by the employer. The other dependants also will undertake to refund the amount in the event the claim is successful."

Held: (1) in accepting payment on the conditions mentioned the plaintiff had not "recovered" compensation within section 20(a) of the Workmen's Compensation Ordinance (*Elligott v. Nebbett* (1) followed);

(2) the Court is not bound by the sum offered to, and accepted by, the plaintiff, because such acceptance is subject to the consent of the Court, there being minor beneficiaries.

Cases referred to:—

(1) *Elligott v. Nebbett* (1948) 1 All E.R. 514.

(2) *Kelly v. North British Rly. Co.* 9 B.W.C.C. 422, 427.

(3) *Oliver v. Nautilus S.S. Co.* (1903) 2 K.B. 639, 650.